

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

In Reference to:

OP:E:EO:T:2

Date: NOV 9 1998

Date 6/24/99

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

According to your Form 1023 Application, you were formed on [REDACTED] as a [REDACTED] nonprofit corporation by concerned cattle men and women and agriculture-related businesses to effectively deal with the negative impact of imports on profitability in the U.S. cattle industry. Your directors are required to be cow-calf producers, seedstock (purebred) breeders, livestock market owners, or stocker operators.

You will raise funds and enforce U.S. trade laws relating to cattle and beef to ensure that international trade is fair and does not have a negative impact on domestic cow-calf or stocker operators. Your main activity will be to fund and file a petition for import relief with the relevant federal government agencies. You have retained a law firm for this purpose. You must represent [REDACTED] % of the cattle producers in the industry to have standing to file this petition. You make presentations at public places (e.g., community halls, conference centers, auction yards) to explain import damage and trade law remedies and to solicit support for the petition (as well as financial support). Legal expenses (including research expenses) are projected to be about [REDACTED] of your total expenses in the first three years.

Your other planned activities are investigating trade law violations, monitoring enforcement actions, ensuring that protective trade barriers offered to other U.S. agricultural commodities are also offered in a non-discriminatory fashion to cattle producers, and publishing information in furtherance of your purposes.

Your sole anticipated source of support is contributions. You will solicit cattle producers and other persons affected by unfair trade practices or damaging import levels in the cattle industry.

You claim to qualify under section 501(c)(3) as a charitable organization on the grounds of lessening the burdens of government and promoting social welfare by defending human and civil rights secured by law, by enforcing the trade laws. You claim analogy to combatting discrimination based on race, sex, and age, as in Rev. Rul. 72-228. You claim to promote education and to conduct scientific research by investigating trade violations and publishing the results. You also claim analogy to public interest law firms and party plaintiffs, by enforcing laws based on a broad public interest. You claim to benefit the public (particularly State economies dependent on a healthy cattle industry) by benefitting the cattle industry, which includes 1.2 million producers and gross farm sales of over \$30 billion.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, scientific, or certain other purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization "operates exclusively" for exempt purposes only if it engages primarily in activities that accomplish such purposes. It does not operate exclusively for exempt purposes if more than an insubstantial part of its activities does not further such purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes under section 501(c)(3) of the Code unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations

designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(d)(5)(i) of the regulations provides that the term "scientific," as used in section 501(c)(3) of the Code, includes the carrying on of scientific research in the public interest. "Research" when taken alone is a word with various meanings; it is not synonymous with "scientific"; and the nature of particular research depends upon the purpose which it serves. For research to be "scientific," within the meaning of section 501(c)(3), it must be carried on in furtherance of a "scientific" purpose. The determination as to whether research is "scientific" does not depend on whether such research is classified as "fundamental" or "basic" as contrasted with "applied" or "practical."

Section 1.501(c)(3)-1(d)(5)(ii) of the regulations provides that scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

Rev. Rul. 80-278, 1980-2 C.B. 175, held charitable under section 501(c)(3) of the Code an organization whose primary activity was instituting and maintaining environmental litigation as a party plaintiff. The organization did not bring lawsuits in cases where a substantial purpose was to benefit a private party or interest. The organization's litigation program is financed through membership dues and contributions from the public. The Service set forth a three-part test for determining whether an organization's activities will be considered permissible under section 501(c)(3):

- (1) The purpose of the organization is exempt;
- (2) the activities are not illegal, contrary to a clearly defined and established public policy, or in conflict with express statutory restrictions; and
- (3) the activities are in furtherance of the organization's exempt purpose and are reasonably related to the accomplishment of that purpose.

Rev. Rul. 85-2, 1985-1 C.B. 178, held that an organization providing legal advice and training to volunteer guardians ad litem who represented abused and neglected children before a juvenile court that required their appointment lessened the burdens of government and therefore qualified under section 501(c)(3) of the Code. For several years prior to the implementation of the volunteer program, the court appointed and paid attorneys to serve as guardians ad litem and represent the children in court proceedings. The court was experiencing problems in the appointment of attorneys and decided to initiate the volunteer program. The organization was supported in part by grants from the juvenile court. The Service established a two-part test for determining whether an activity lessens government burdens: (1) whether a government unit considers the organization's activities to be its burdens; and (2) whether the activities actually lessen the burden. The government must objectively manifest that it considers the activity its burden, which may be shown by the interrelationship between the government and the organization. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. The interrelationship between the organization and the government may provide evidence that the government considers the organization's activities to be its burden. To determine whether the organization is actually lessening the burdens of government, all of the relevant facts and circumstances must be considered. A favorable working relationship between the government and the organization is strong evidence of lessening of the government burdens.

Rev. Proc. 92-59, 1992-2 C.B. 411, superseding Rev. Proc. 71-39, sets forth guidelines for 501(c)(3) public interest law firms. The engagement of the organization in litigation must be in representation of a broad public interest rather than a private interest. The litigation activity cannot normally extend to direct representation of litigants in actions between private persons where the financial interests at stake would warrant representation from private legal sources. The policies and programs of the organization must be the responsibility of a board or committee representative of the public interest. Also, there cannot be an arrangement to provide, directly or indirectly, a deduction for the cost of litigation that is for the private benefit of the donor.

[REDACTED]

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court upheld a determination by the Service that an organization was not exempt under the 501(c)(3) predecessor statute. The organization's charter included the following purpose:

the mutual welfare, protection and improvement of business methods among merchants . . . so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants . . . and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business.

The court stated that the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption regardless of the number or importance of truly exempt purposes, and reasoned that an important if not the primary pursuit of the organization was to promote not only an ethical but also a profitable business community. The organization's efforts to cleanse the business community of dishonest practices, while commendable and perhaps educational to some people, were directed fundamentally to ends other than that of education. The court also noted Congressional intent that such organizations qualify under the section 501(c)(6) predecessor rather than 501(c)(3).

Retired Teachers Legal Defense Fund, Inc. v. Commissioner, 78 T.C. 280 (1982), held not exempt under section 501(c)(3) of the Code an organization whose voluntary membership consisted of retirees of New York City's teacher retirement system. The organization's main activity was raising funds for the prosecution of a lawsuit brought on behalf of the members and other beneficiaries of the city's pension fund (105,000 teachers in the system). The principles of the lawsuit affected the 12 million State and local public employee pension plan members. The court reasoned that the beneficiaries of the suit were not poor and distressed as a group and thus not a charitable class, and that the public benefits arising from prosecution of the suit were too incidental and remote in comparison to serving the members' private property interests.

American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989) held not exempt under section 501(c)(3) of the Code an organization organized primarily to conduct a school for political campaign professionals and closely affiliated with the Republican Party. The court reasoned that an organization's actual purposes are not necessarily limited to those stated in

[REDACTED]

the organizing documents; that an organization may serve and benefit private interests even if such interests are not "private shareholders or individuals" with respect to the organization; that Republican entities and candidates are private interests and not representative of the community at large, even though millions of people are members of the Republican Party; and that the organization operated substantially for the benefit of Republican entities and candidates, even though the primary beneficiaries of the organization's activities were the students themselves.

To qualify for exemption under section 501(c)(3), you must operate "exclusively" for exempt purposes, such as charitable or educational purposes. If the facts and circumstances indicate that you have a substantial purpose to benefit private individuals or that a substantial part of your activities benefits private individuals (other than incidentally), then you are not operated exclusively for exempt purposes.

While some of your activities may further educational purposes, your activity of funding and initiating proceedings to enforce trade laws (litigation activity) appears directed primarily to promoting the interests of the cattle industry, whose members will be your contributors and are represented on your board. We find that you have a substantial purpose to promote the business interests of the cattle industry, and that your activities will benefit it to a substantial degree. Furthermore, you have failed to clearly establish that the members of such industry are "poor or distressed or underprivileged" and thus deserving of charitable relief. See, e.g., Retired Teachers Legal Defense Fund, Inc.

Given the substantial private benefit inherent in your activities, you cannot qualify for 501(c)(3) exemption even if your activities will also substantially benefit the public. However, even absent the private benefit to business interests discussed above, we do not find that your activities will lessen the burdens of government, consist of the conduct of scientific research or of a public interest law firm, promote social welfare by defending human and civil rights secured by law, or otherwise promote exclusively exempt purposes.

In order to lessen the burdens of government, it must be the government's clear burden to bring actions to enforce the trade laws. While your information indicates that the [REDACTED] [REDACTED] has authority to initiate proceedings unilaterally under [REDACTED] it appears that the primary responsibility for bringing actions to enforce the trade laws rests with the affected U.S. industries. Thus, the filing

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of your planned import relief petition is a burden of the cattle industry rather than a burden of the federal government. Moreover, few of the indicia considered significant by the Service in determining that an organization is lessening the burdens of government are present in this case. For instance, you were not created by a statute; your governing body is not controlled by a government agency; there is no evidence that your proposed activities were previously conducted by a government agency for a significant period of time; and your activities do not appear to defray any significant expenses of government.

While you may conduct research and investigations of cattle imports and their effect on prices and the domestic cattle industry, such research would appear to be conducted largely (if not solely) for the purpose of supporting your planned petition for import relief. Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations. In our view, filing an import relief petition on behalf of an industry is an industrial operation, as is conducting economic research in support of such petition.

Similarly, filing a legal or administrative class action to protect the lawful rights and interests of the members of an industry is not ordinarily regarded as combatting discrimination, defending human or civil rights secured by law, or acting in behalf of the public interest, within the meaning of the general law of charity, although such activity may be permissible for an agricultural organization or a business league. As discussed above, the members of a given industry, collectively, are not ordinarily regarded as constituting a charitable class deserving of charitable relief, but as financially able to protect their own economic interests through individual or collective group action.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is

[REDACTED]

submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: OP:E:EO:T:2 [REDACTED], Room 6539
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

In. h. a. t. e.
O P E E O T 2
[REDACTED]
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